SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 634

UNITED STATES OF AMERICA, APPELLANT,

vs.

LESTER E. GRAINGER

No. 635

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE AND WILLIAM G. KENNEDY

No. 636

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY AND A. L. SHAPIRO

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MARCH 2, 1953

JURISDICTION NOTED APRIL 6, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 634

UNITED STATES OF AMERICA, APPELLANT,

vs.

LESTER E. GRAINGER

No. 635

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE AND WILLIAM G. KENNEDY

No. 636

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY AND A. L. SHAPIRO

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

INDEX

	Original	Print
Record from United States District Court, Northern California	1	1
Clerk's certificate (omitted in printing)	1	
Indictment (Grainger)	3	1
Indictment (Clavere and Kennedy)	10	6
Indictment (Clavere, Kennedy, and Shapiro)	16	10
Motion to dismiss (Grainger)	21	14
Motion to dismiss (Clavere and Kennedy)	22	15

	Original	Print
Record from United States District Court, Northern California—Continued		
Motion to dismiss (Clavere and Kennedy)	29	1
Motion to dismiss (Shapiro)	31	2
Opinion and order	34	2
Order granting motions to dismiss	46	3
Notices of appeal	47	3
Notices under Rule 12 (omitted in printing)	50	
Docket entries	53	4
Designation of record (omitted in printing)	56	
Statement of points to be relied upon and designation of record to be printed	58	3
Order noting probable jurisdiction	60	3

Print

1-2 Certificate of Clerk to Record on Appeal—omitted

19

21 3 (Endorsed): A true Bill, D. A. Mauer, Foreman.

23

31 In the District Court of the United States for the Northern District

32 of California, Northern Division

49 Cr. 10744

UNITED STATES OF AMERICA, PLAINTIFF

36

37 *vs.*

LESTER E. GRAINGER, DEFENDANT

INDICTMENT—Filed May 20, 1952

(18 USCA 80—False Claims Upon Commodity Credit Corporation.)

The Grand Jury Charges:

Count One:

A. That at the time hereinafter mentioned Lester E. Grainger, (hereinafter called "said defendant"), at Stockton, in the county of San Joaquin, within the Northern District of California, Northern Division, did unlawfully, knowingly, wilfully and fraudulently make and cause to be made, present and cause to be presented for payment and approval to and by the Commodity Credit Corporation, being then a corporation in which the United States of America was a stockholder, a claim upon the said Commodity Credit Corporation, hereinafter more particularly described, knowing said claim to be false, fictitious and fraudulent in the manner hereinafter set forth;

B. That said claim was presented on or about May 28, 1945; that said claim is more particularly described as a Secondary

4 Handler's Statement of wool purchases; that in said claim said defendant certified that he paid J. C. Esmond, Wallace, California, $502.08 for 1046 pounds of wool at the rate of .48¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid J. C. Esmond $470.70 for said wool at the rate of .45¢ per pound.

Count Two:

A. Realleges all of the allegations contained in Paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid Herman Blohm, Lodi, California, $721.72 for 1536

pounds of wool at the rate of .47¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid Herman Blohm $706.56 for said wool at the rate of .46¢ per pound.

Count Three:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid A. L. Hammer, Stockton, California, $180.90 for 402 pounds of wool at the rate of .45¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid A. L. Hammer $160.80 for said wool at the rate of .40¢ per pound.

Count Four:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid A. Vierra, Niles, California, $693.12 for 1444 pounds of wool at the rate of .48¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid A. Vierra $664.24 for said wool at the rate of .46¢ per pound.

Count Five:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid John Armstrong, Byron, California, $888.26 for 1931 pounds of wool at the rate of .48¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid John Armstrong $868.95 for said wool at the rate of .45¢ per pound.

Count Six:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid Errol Olsen, Oakdale, California, $685.02 for 1398 pounds of wool at the rate of .49¢ per pound; whereas in truth and

in fact as defendant then and there well knew, he had paid Errol Olsen $657.06 for said wool at the rate of .47¢ per pound.

Count Seven:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945;
6 that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid Grupe Bros., Stockton, California, $1107.32 for 2356 pounds of wool at the rate of .47¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid Grupe Bros. $1048.42 for said wool at the rate of .44½¢ per pound.

Count Eight:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid Rollo Wittmore, Clay, California, $76.12 for 173 pounds of wool at the rate of .44¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid Rollo Wittmore $74.39 for said wool at the rate of .43¢ per pound.

Count Nine:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid W. A. Fancher, Ione, California, $132.02 for 287 pounds of wool at the rate of .46¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid W. A. Fancher $129.15 for said wool at the rate of .45¢ per pound.

Count Ten:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

7 B. That said claim was made on or about May 28, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid W. W. Stacks, Galt, California, $81.12 for 169 pounds of wool at the rate of .48¢ per pound; whereas in truth

and in fact as defendant then and there well knew, he had paid W. W. Stacks $79.43 for said wool at the rate of .47¢ per pound.

Count Eleven:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about June 25, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid Juan Echeberria, San Ardo, California, $853.12 for 1984 pounds of wool at the rate of .43¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid Juan Echeberria $833.28 for said wool at the rate of .42¢ per pound.

Count Twelve:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about June 25, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid V. Heden, Concord, California, $56.80 for 142 pounds of wool at the rate of .40¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid V. Heden $53.96 for said wool at the rate of .38¢ per pound.

8 *Count Thirteen:*

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about June 25, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid E. Powell, Turlock, California, $441.45 for 981 pounds of wool at the rate of .45¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid E. Powell $421.83 for said wool at the rate of .43¢ per pound.

Count Fourteen:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about June 25, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid E. Powell, Turlock, California, $378.00 for 945 pounds of wool at the rate of .40¢ per pound; whereas in truth

and in fact as defendant then and there well knew, he had paid E. Powell $359.10 for said wool at the rate of .38¢ per pound.

Count Fifteen:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 9, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid J. Douglas, Stockton, California, $78.96 for 188 pounds of wool at the rate of .42¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid J. Douglas $65.80 for said wool at the rate of .35¢ per pound.

9 *Count Sixteen:*

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 9, 1945; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that he had paid L. B. Cassell, San Andreas, California, $44.82 for 166 pounds of wool at the rate of .27¢ per pound; whereas in truth and in fact as defendant then and there well knew, he had paid L. B. Cassell $33.20 for said wool at the rate of .20¢ per pound.

A True Bill

D. A. MAUER,
Foreman.

CHAUNCEY TRAMUTOLO,
United States Attorney.
By THOMAS W. MARTIN,
Assistant U. S. Attorney.

(File endorsement omitted.)

10 (Endorsed): A true bill, D. A. MAUER, *Foreman.*

In the District Court of the United States for the Northern District of California, Northern Division.

Cr. 10759

UNITED STATES OF AMERICA, Plaintiff,

vs.

JOSEPH C. CLAVERE and WILLIAM G. KENNEDY, Defendants.

INDICTMENT—Filed June 27, 1952

(18 USCA 80—False Claims Upon Commodity Credit Corporation.)

The Grand Jury Charges:

Count One:

A. That at the time hereinafter mentioned

JOSEPH C. CLAVERE and WILLIAM G. KENNEDY, (Hereinafter called "said defendants"), at Sacramento, in the County of Sacramento, within the Northern District of California, Northern Division, did unlawfully, knowingly wilfully and fraudulently make and cause to be made, present and cause to be presented for payment and approval to and by the Commodity Credit Corporation, being then a corporation in which the United States of America was a stockholder, a claim upon the said Commodity Credit Corporation, hereinafter more particularly described, knowing said claim to be false, fictitious and fraudulent in the manner hereinafter set forth;

B. That said claim was presented on or about November
11 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases; that in said claim said defendant certified that they paid Jack L. Anderson, Stockton, California, $254.32 for 565 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Two:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant cer-

tified that they had paid James Harley, Yuba City, California, $915.88 for 2043½ pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Three:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendant certified that they had paid George Bontini, Santa Rosa, California, $1,071.00 for 2380 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Four:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Fred Babbino, Santa Rosa, California, $1,127.13 for 2442 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Five:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid J. K. Sexton, Willows, California $1,100.64 for 2642 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Six:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid E. L. Adams, Chico, California, $1,078.50 for 2509 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

Count Seven:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid A. D. Williamson, Stockton, California, $105.28 for 329 pounds of wool; whereas in truth and in
13 fact as defendants then and there well knew they had purchased no wool.

Count Eight:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Albert A. Allemond, Gilroy, California $881.10 for 1958 pounds of wool at the rate of 45¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid Albert A. Allemond $820.67 for said wool at the rate of 42½¢ per pound.

Count Nine:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Don W. Finch, Hollister, California, $509.22 for 1107 pounds of wool at the rate of 46¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid Don W. Finch $476.01 for said wool at the rate of 43¢ per pound.

Count Ten:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Joe P. Racha, Bradley, California,
14 $550.44 for 1251 pounds of wool at the rate of 44¢ per pound; whereas in truth and in fact as defendants then and there

well knew, they had paid Joe P. Racha $512.01 for said wool at the rate of .41¢ per pound.

Count Eleven:

A. Realleges all of the allegations contained in pargaraph A of Count One of this indictment.

B. That said claim was made on or about November 14, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid F. B. Arrabit, San Andreas, California, $2,863.50 for 6225 pounds of wool at the rate of .46¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid F. B. Arrabit $2,739.00 for said wool at the rate of .44¢ per pound.

Count Twelve:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about April 30, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Albert Allemond, Gilroy, California, $603.06 for 1311 pounds of wool at the rate of .46¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid Albert Allemond $550.62 for said wool at the rate of .42¢ per pound.

Count Thirteen:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about April 30, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Fermin Ahistiza, Stockton, California $719.05 for 1970 pounds of wool at the rate of .36½¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid Fermin Ahistiza $629.65 for said wool at the rate of .35¢ per pound.

Count Fourteen:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about April 30, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified

that they had paid Frank Pace, Oakdale, California, $3,697.78 for 9018 pounds of wool at the rate of .41¢ per pound; whereas in truth and in fact as defendants then and there well knew, they had paid Frank Pace $3,607.20 for said wool at the rate of .40¢ per pound.

Count Fifteen:

A. Realleges all of the allegations contained in paragraph A of Count One of this indictment.

B. That said claim was made on or about April 30, 1946; that said claim is more particularly described as a Secondary Handler's Statement of wool purchases on which said defendants certified that they had paid Jean Saldubere, Belota, California, $938.63 for 3028 pounds of wool; whereas in truth and in fact as defendants then and there well knew they had purchased no wool.

A True Bill.

D. A. MAUER,
Foreman

CHAUNCEY TRAMUTOLO,
United States Attorney
By: THOMAS W. MARTIN,
Assistant U. S. Attorney

(File endorsement omitted.)

16 In the District Court of the United States for the Northern District of California, Northern Division.

Cr. 10767

UNITED STATES OF AMERICA, Plaintiff,

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY, and A. L. SHAPIRO, Defendants.

INDICTMENT—Filed June 27, 1952

(18 USCA 371, 80 Conspiracy to Make False Claims upon Commodity Credit Corporation)

The Grand Jury Charges:

Count One: That at a time and place to said Grand Jurors unknown, JOSEPH C. CLAVERE and WILLIAM G. KENNEDY did knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other,

and with divers other persons whose names are to the Grand Jurors unknown, to commit offenses against the United States of America, and the laws thereof, to-wit: to make false, fictitious and fraudulent claims upon the Commodity Credit Corporation, a corporation in which the United States of America was a stockholder, in connection with wool purchases made by Sacramento Wool Company as a Secondary Handler under the rules and regulations of the Secretary of Agriculture of the United States by setting forth falsely in certain statements known as "Secondary Handler's Statements" that purchases of wool had been made from persons
17 in certain amounts and weights and for certain prices;

That in pursuance of, and in furtherance of, in execution of and for the purposes of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the defendants did commit the following overt acts within the Northern Division of the Northern District of California, and within the jurisdiction of this court:

1. That on or about November 14, 1946, at Sacramento, California, defendants made and presented to Milton S. Theller as a primary wool handler, a Secondary Handler's statement of wool purchased by Sacramento Wool Company setting forth purchases of wool from the following persons:

Jack L. Anderson, Stockton, California, $254.32 for 565 pounds of wool;

James Harley, Yuba City, California, $915.88 for 2043½ pounds of wool;

George Bontini, Santa Rosa, California, $1071.00 for 2380 pounds of wool;

Fred Babbino, Santa Rosa, California, $1127.13 for 2442 pounds of wool;

J. K. Sexton, Willows, California; $1100.60 for 2642 pounds of wool;

E. L. Adams, Chico, California; $1078.50 for 2509 pounds of wool;

A. D. Williamson, Stockton, California, $105.28 for 329 pounds of wool;

Don W. Finch, Hollister, California, $509.22 for 1107 pounds of wool;

Albert A. Allemond, Gilroy, California, $881.10 for 1958 pounds of wool;

Joe P. Racha, Bradley, California, $550.44 for 1251 pounds of wool;

F. B. Arrabit, San Andreas, California, $2863.50 for 6225 pounds of wool;

2. That on or about April 30, 1946, at Sacramento, California, defendants made and presented to Milton S. Teller as a primary wool handler, a Secondary Handler's Statement of wool purchased by Sacramento Wool Company setting forth purchases of wool from the following persons:

Albert Allemond, Gilroy, California, $603.06 for 1311 pounds of wool;
Fermin Ahisfiza, Stockton, California, $719.05 for 1970 pounds of wool;
Frank Face, Oakdale, California, $3697.78 for 9018 pounds of wool;
Jean Saldubere, Belota, California, $938.63 for 3028 pounds of wool;

3. That on or about April 15, 1947, at Sacramento, California, defendants made and presented to Milton S. Theller, as a primary wool handler, a Secondary Handler's Statement of wool purchased by Sacramento Wool Company setting forth purchases of wool from the following persons:

Virgil Airola, San Andreas, California, $1278.45 for 2841 pounds of wool;
J. Yribarren, Tranquillity, California, $1208.25 for 2685 pounds of wool;
Mary Gurries, Gilroy, California, $798.75 for 1775 pounds of wool;
Albert Allemond, Gilroy, California, $816.30 for 1814 pounds of wool;
August Matt, Placines, California, $1101.60 for 2448 pounds of wool;
Juan Echeberria, San Ardo, California, $1029.60 for 2288 pounds of wool;
E. T. McNamara, Le Grand, California, $1101.60 for 2448 pounds of wool;
Joe Racina, Bradley, California, $1116.90 for 2482 pounds of wool;
Hosker Bros., Altamont, California, $520.65 for 1157 pounds of wool;
George W. Warren, Paso Robles, California, $885.60 for 1968 pounds of wool;

The Grand Jury Further Charges:

Count Two: That at a time and place to the said Grand Jurors unknown, JOSEPH C. CLAVERE, WILLIAM G. KENNEDY and A. L. SHAPIRO, did knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together

and with each other, and with divers other persons whose names are to the Grand Jurors unknown, to commit offenses against the United States of America, and the laws thereof, to-wit: to
19 make and present and cause to be made and presented false, fictitious and fraudulent claims upon the Commodity Credit Corporation, a corporation in which the United States of America was a stockholder, in connection with wool purchases made by Sacramento Wool Company as a Secondary Handler under the rules and regulations of the Secretary of Agriculture of the United States by setting forth falsely in certain statements known as "Secondary Handler's" statement that purchases of wool had been made from persons in certain amounts and weights and for certain prices;

That in pursuance of, and in furtherance of, in execution of and for the purposes of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the defendants did commit the following overt acts, within the Northern Division of the Northern District of California, and within the jurisdiction of this court:

1. That on or about November 14, 1946, at Sacramento, California, defendant Joseph C. Clavere and William G. Kennedy made and presented to Milton S. Theller as a primary wool handler, a Secondary Handler's statement of wool purchases by Sacramento Wool Company setting forth purchases of wool from the following persons:

Jack L. Anderson, Stockton, California, $254.32 for 565 pounds of wool;
James Harley, Yuba City, California, $915.88 for 2043½ pounds of wool;
George Bontini, Santa Rosa, California, $1071.00 for 2380 pounds of wool;
Fred Babbino, Santa Rosa, California, $1127.13 for 2442 pounds of wool;
J. K. Sexton, Willows, California, $1100.64 for 2642 pounds of wool;
E. L. Adams, Chico, California, $1078.50 for 2509 pounds of wool;
A. D. Williamson, Stockton, California, $105.28 for 329 pounds of wool;

20 2. That on or about September 23, 1946, at Sacramento, California, defendant William G. Kennedy issued Check No. 10163, on the Capital National Bank payable to the order of Fred Babbino in the amount of $1,098.90;

3. That on or about September 30, 1946, at Sacramento, California, William G. Kennedy issued Check No. 1 on the Capital

National Bank payable to the order of Fred Babbino in the amount of $28.23;

4. That on or about October 4, 1946, at Sacramento, California, defendant A. L. Shapiro endorsed his name on the back of said Check No. 1 payable to Fred Babbino in the amount of $28.23.

A True Bill.

D. A. MAUER,
Foreman

CHAUNCEY TRAMUTOLO,
United States Attorney
By THOMAS W. MARTIN,
Assistant U. S. Attorney.

(File endorsement omitted.)

21 In United States District Court

Cr. 10744

UNITED STATES OF AMERICA, Plaintiff,

vs.

LESTER E. GRAINGER, Defendant.

MOTION BY DEFENDANT TO DISMISS INDICTMENT—Filed June 7, 1952

The defendant moves that the indictment be dismissed on the following grounds:

I.

None of the acts set forth in the indictment state facts sufficient to constitute an offense against the United States.

II.

The indictment was not found within three (3) years next after the alleged offenses were committed.

III

That it cannot be ascertained from said indictment what sort of claim defendant made upon the Commodity Credit Corporation.

MILLER, KROLOFF & BROWN
Jack J. Miller
Suite 209, Esquire Theatre Bldg.
11 South American Street
Stockton, California
Attorneys for Defendant.

(File endorsement omitted)

22 In United States District Court

Crim. No. 10759

UNITED STATES OF AMERICA, Plaintiff,

vs.

JOSEPH C. CLAVERE and WILLIAM G. KENNEDY, Defendants

MOTION BY DEFENDANTS TO DISMISS INDICTMENT—Filed July 17, 1952

The Defendants Joseph C. Clavere and William G. Kennedy move that the indictment, and each and every count thereof, be dismissed upon the following grounds, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure:

I

None of the acts set forth in the indictment, and each and every count thereof, states facts sufficient to constitute an offense against the United States.

II

That the said indictment was not found within three years next after the alleged crime or offenses therein alleged, or any of
23 them, were committed, and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

III

That the first count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed, and therefore the alleged crimes or offenses therein alleged and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

IV

That the second count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged

crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided, and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

V

That the third count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the
24 statutes of the United States in such cases made and provided, and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

VI

That the fourth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

VII

That the fifth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

VIII

That the sixth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes
25 of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

IX

That the seventh count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

X

That the eighth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XI

That the ninth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be
26 either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XII

That the tenth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XIII

That the eleventh count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them were committed and therefore the alleged

crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XIV

That the twelfth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses
27 therein alleged, or any of them.

XV

That the thirteenth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XVI

That the fourteenth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XVII

That the fifteenth count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed and therefore the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

28

XVIII

That neither the said indictment nor any of the said fifteen counts thereof was found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed, and the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided, and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

XIX

That it cannot be ascertained from the said indictment what sort of claims said defendants made upon the Commodity Credit Corporation.

SHERWOOD & LEWIS, AND MAX LIEBERMAN,

By JOHN V. LEWIS,

703 Market Street, San Francisco, California,
Attorneys for Defendants Joseph C. Clavere and William G. Kennedy.

[File endorsement omitted.]

29

In United States District Court

Crim. No. 10767

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY AND A. L. SHAPIRO, DEFENDANTS

MOTION BY DEFENDANTS TO DISMISS INDICTMENT—Filed July 17, 1952

The defendants Joseph C. Clavere and William G. Kennedy move that the indictment, and each and every count thereof, be dismissed upon the following grounds, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure:

I

None of the acts set forth in the indictment, and each and every count thereof, states facts sufficient to constitute an offense against the United States.

II

That the said indictment was not found within three years next after the alleged crime or offenses therein alleged, or any of them, were committed, and the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

III

That the first count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed, and the alleged crimes or offenses therein alleged and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

IV

That the second count of the said indictment was not found within three years next after the alleged crimes or offenses therein alleged, or any of them, were committed, and the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided and cannot now be prosecuted, and that these defendants cannot now be either prosecuted, tried or punished for the alleged crimes or offenses therein alleged, or any of them.

V

That it cannot be ascertained from the said indictment what sort of claims said defendants made upon the Commodity Credit Corporation.

SHERWOOD & LEWIS, AND MAX LIEBERMAN,
By JOHN V. LEWIS,
703 Market Street, San Francisco, Calif.,
Attorneys for Defendants Joseph C. Clavere and William G. Kennedy.

[File endorsement omitted.]

31 In United States District Court

Cr. 10767

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY AND A. L. SHAPIRO, DEFENDANTS

MOTION BY DEFENDANT A. L. SHAPIRO TO DISMISS INDICTMENT—Filed July 17, 1952

(Rule 12(b) of the Federal Rules of Criminal Procedure)

The defendant A. L. Shapiro moves that the indictment herein, and each and every count thereof, be dismissed as to the said Defendant, and as to the Defendants herein on the following grounds:

I

That none of the acts, matters, or things set forth in the indictment herein state facts sufficient to constitute an or any offense against the United States of America with respect to, by, or as to said defendant A. L. Shapiro.

32 II

That none of the acts, matters, or things set forth in Count One of the said indictment herein state facts sufficient to constitute an, or any, offense against the United States of America with respect to, by, or as to said defendant A. L. Shapiro.

III

That none of the acts, matters, or things set forth in Count Two of said indictment herein state facts sufficient to constitute an, or any, offense against the United States of America, with respect to, by, or as to said defendant A. L. Shapiro.

IV

That the said indictment was not found within three (3) years next after the alleged crime or offenses therein alleged, or any of them, are alleged to have been committed by said defendant or by said defendants; and that the alleged crimes or offenses therein alleged, and all of them, are barred by the statutes of the United States in such cases made and provided, and cannot now be prosecuted, and that the defendant A. L. Shapiro cannot now be either prosecuted, tried or punished for the alleged crimes, or offenses, if any, therein alleged, or any of them; that prosecution for any and

all alleged crimes or offenses (if any) set forth in said indictment is barred by the Statute of Limitations in such case made and provided.

V

That the first count of said indictment was not found within three (3) years next after the alleged crimes or offenses therein alleged (if any), or any of them, are alleged to have been committed; and that the alleged crimes or offenses therein alleged, if any, and all of them, are barred by the statutes of the United States in such cases made and provided; and cannot now be prosecuted, and that the defendant A. L. Shapiro cannot now be either prosecuted,
33 tried or punished for the alleged crimes or offenses therein alleged (if any) or any of them; that prosecution for any and all alleged crimes or offenses (if any) set forth in Count One of said indictment is barred by the Statute of Limitations in such case made and provided.

VI

That the second count of the said indictment was not found within three (3) years next after the alleged crimes or offenses therein alleged (if any), or any of them, are alleged to have been committed; and that the alleged crimes or offenses therein alleged, if any, and all of them, are barred by the statutes of the United States in such cases made and provided, and cannot now be prosecuted, and that the defendant A. L. Shapiro cannot now be either prosecuted, tried, or punished for the alleged crimes or offenses therein alleged (if any) or any of them; that prosecution for any and all alleged crimes or offenses (if any) set forth in Count Two of said indictment is barred by the Statute of Limitations in such case made and provided.

VII

That it cannot be ascertained from said indictment, or either count thereof, how or in what manner the alleged overt acts set forth either in Count One or Count Two of said indictment constitute any offense against the United States of America, or what offense against the United States of America is alleged to have been committed by this defendant A. L. Shapiro, or by the Defendants, or what sort of claims (if any) are alleged to have been made upon the Commodity Credit Corporation.

GEARY, SPRIDGEN & MOSKOWITZ,
By (S.) CARLTON SPRIDGEN,
400 Bank of America Bldg.,
Santa Rosa, California,
Attorneys for defendant A. L. Shapiro.

[File endorsement omitted.]

34 [File endorsement omitted]

In United States District Court

[Title omitted]

OPINION AND ORDER—Filed December 5, 1952

35 The applicability of the Wartime Suspension of Limitations Act of 1942 or of its successor statute of 1948 is the crucial question presented by the motion to dismiss filed in each of these three cognate cases.

The indictment in No. 10744, filed on May 20, 1952, and the one in No. 10759, filed on June 27, 1952, charge violations of the False Claims Statute, 18 USC section 80 (1946 ed.). The indictment in No. 10767, returned on June 27, 1952, charges a conspiracy (18 USCA section 88 (1946 ed.)) to violate the False Claims Statute.

1. *The Indictments*

For the purposes of this decision, these three cases are controlled by the identical legal principles, and may therefore be considered together.

In No. 10744, the defendant is charged with violations of the statute that dealt with "Presenting false claims", 18 USC section 80 (1946 ed.) (Criminal Code, section 35(A)), hereinafter referred to as "Section 80".[1] It is alleged that, at Stockton, California, he "unlawfully, knowingly, willfully and fraudulently" presented, etc., for payment to the Commodity Credit Corporation, hereinafter referred to as "the Corporation", "being then a corporation
36 in which the United States . . . was a stockholder", certain claims upon the Corporation, "knowing said claim(s) to be false, fictitious and fraudulent".

Appearing as paragraph A of Count One, the statement of which the foregoing is the gist, is repeated, by reference, in each of the

[1] In the new revision of Title 18, Section 80 was divided into two parts, the portion making it a crime to present false claims being retained as 18 USCA section 287, and the part relating to false statements becoming 18 USCA section 1001. See "Historical and Revision Notes", 18 USCA, volume containing sections 1 to 370, page 658. On its cover, Indictment No. 10744 erroneously cites 18 USCA 1001, although it plainly deals with false *claims*, and with offenses alleged to have been committed prior to September 1, 1948, the effective date of the new revision. Similarly, No. 10767 refers on its cover to 18 USCA section 371 of the revised Code, instead of to section 88, of the earlier compilation. This error is repeated in the caption of the latter indictment proper.

succeeding counts, of which there are sixteen in all. Each claim forms the basis of a separate count. Paragraph B of each count gives the details relating to each of the claims, respectively, which were presented on various dates in 1945. The details are not relevant to the legal questions now being considered. Each claim is alleged to be a "Secondary Handler's Statement of wool purchases" in which the defendant certified that he paid certain named persons certain sums greater than those that he actually paid.

In No. 10759, there are 15 counts, each count dealing with a different claim presented to the Corporation in 1946.

In No. 10767, Count 1 charges a conspiracy to make false, fictitious, and fraudulent claims upon the Corporation in connection with purchases made by the Sacramento Wool Company, hereinafter referred to as "the wool company", as a secondary handler under the rules and regulations of the Secretary of Agriculture, by setting forth falsely in certain statements, known as "Secondary Handler's Statements", that purchases of wool had been made from persons in certain amounts and weights and for certain prices. Three overt acts are alleged; each act consisting of a Secondary Handler's statement covering several wool purchases from certain named persons, all three such statements having been presented at Sacramento, California, to Milton S. Theller, as a "primary wool handler", by the defendants, on dates ranging from April 30, 1946, to April 15, 1947, inclusive. Only the named defendants Clavere and
37 Kennedy are charged with having taken part in the conspiracy alleged in Count 1, although "divers other persons whose names are to the Grand Jurors unknown" are also alleged to have taken part.

In Count 2 of No. 10767, all three defendants named in the indictment are charged with conspiring with each other and with other unnamed persons to present fraudulent claims upon the Corporation in connection with purchases made by the wool company as a secondary handler by setting forth falsely in certain statements, etc., that purchases of wool had been made from persons in certain amounts, etc. Four overt acts are alleged to have been committed between September 23, 1946, and November 14, 1946, inclusive, involving either a Secondary Handler's Statement made and presented to Theller by the defendants Clavere and Kennedy, or checks issued by the defendant Kennedy, one of which was endorsed by the defendant Shapiro.

2. The Motions to Dismiss

In each of the three cases, motions to dismiss were filed by the respective defendants. Although several grounds were urged in support of each motion, only one need be here considered; namely,

that the indictments were not found within three years next after the crimes therein alleged had been committed.

3. *The Pertinent Statutes*

The false Claims Statute, as it stood at the time that the offenses charged in the three indictments are alleged to have been committed, is found in Title 18 of the 1946 edition of the United States Code, and reads as follows:

> *"Section 80. (Criminal Code, section 35(a).) Presenting false claims.*
>
> "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

In the same title of the same edition of the United States Code there was to be found the following conspiracy statute:

> *"Section 88. (Criminal Code, section 37.) Conspiring to commit offense against the United States.*
>
> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

And finally, there was Section 590a of the same Title, reading as follows:

"Suspension of limitations on offenses involving the defrauding of the United States.

"The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of World War II, or with any disposition or termination inventory by any war contractor or Government agency, or (3) committed in connection with the care and handling and disposal of property under sections 1611-1614, 1615-1646 of Appendix to Title 50, shall be suspended until three years after the termination of hostili-
39 ties in World War II as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law."

The successor of Section 590a, *supra*, is Section 3287 of Title 18 of the 1948 revision of the United States Code, and reads as follows:

"Wartime suspension of limitations

"When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

"Definitions of terms in section 103 of Title 41 shall apply to similar terms used in this section."

4. *The Questions Presented*

It is conceded that prosecution is barred by the three-year statute of limitations, 18 USC 582 (1946 ed.), unless the running of this statute has been "tolled" by the operation of the Wartime Suspension of Limitations Act of 1942, Section 590a of Title 18 of the same edition of the Code, *supra*, or its successor, 18 USCA section 3287, *supra*. The defendants contend that (1) The Suspension Act does not apply to any offenses arising under the statutes upon which the indictments are based, the false Claims Statute and the General Conspiracy Statute, *supra*; (2) even if the Act applied, in terms to the offenses charged, the suspension was lifted on
40 September 1, 1948, the date the repeal of Section 590a, *supra*, became effective, and accordingly prosecution was barred "at the latest" on September 1, 1951; and (3) even if the Suspension Act applied to the offenses charged and the suspension survived the repeal of Section 590a by the Act of 1948, prosecution of the offenses was barred after December 31, 1949, three years after the proclamation terminating hostilities.

The crucial question, however, may be further narrowed down to the following:

Before the Wartime Suspension of Limitations Act, *supra*, can be invoked, must the statute under which the indictment is brought spell out in so many words—or, as the Supreme Court has expressed the same thought in this precise connection, "denominate"—*fraud against the United States?*

5. *Before the Wartime Suspension of Limitations Act Can Be Relied Upon, the Statute Under Which the Indictment Is Brought Must in So Many Words Specify "Fraud" Against the United States.*

A number of the cases cited by the defendants in support of their contention that the statute under which an indictment is brought must specify "fraud against the United States" before the Wartime Suspension of Limitations Act becomes applicable, may be distinguished from the cases at bar because the decisions were expounding statutes different from those applicable to the indictments now before this Court. There is, however, a residuum of Supreme Court opinions that cannot be thus brushed aside.

In *United States* v. *Scharton*, 285 U.S. 518, 522 (1932), the indictment was under section 1114(b) of the Revenue Act of 1926 (Internal Revenue Acts, 26 USCA section 1114(b), page 325), which read in part as follows:

"Any . . . person who willfully attempts in any
41 manner to evade or defeat any tax imposed by this Act . . . or the payment thereof, shall . . . be guilty of a felony . . ."

The applicable statute of limitations was found in Section 1110(a) of the Act (18 USCA 585 (1927 ed.), and was as follows:

> "No person shall be prosecuted, tried or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense: *Provided*, That for offenses involving the defrauding or attempting to defraud the United States or agency thereof, whether by conspiracy or not, in any manner, the period of limitation shall be six years, . . ."

Despite the fact that it was a part of the very statute under which the indictment was brought, the proviso was held not to apply because fraud against the United States or any agency thereof was not an ingredient of the offense charged. The Court pointed out that the proviso was an excepting clause and therefore was to be strictly construed. The section under which the charge was laid made an attempt to evade any tax under the Revenue Act of 1926 an offense *without the mention of fraud*. In the False Claims Statute, which this Court is here considering, there is likewise no mention of fraud against the United States. And assuredly, there is at least as much *actual* fraud committed against the United States in "evading or defeating" a Federal tax as there is in certifying in a Secondary Handler's Statement that one has paid certain named persons certain sums greater than those that he actually paid.

In the *Scharton* case, the Supreme Court closed its opinion in words that are peculiarly applicable here:

> "And, as the (limitations) section has to do with statutory crimes, it is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so *denominated* by the statutes creating offenses. (Cases cited) The purpose of the proviso is to apply the six-year period to cases 'in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense.' (Cases cited)." (Emphasis supplied)

This Court is convinced that when the Supreme Court, in the above passage, referred to "cases", it was not confining its fraud shibboleth to internal revenue cases, but to indictments under *any* statute "in which defrauding or an attempt to defraud the United States is an ingredient". Only as to indictments of *that* general type can the Wartime Suspension of Limitations Act be invoked.

In *Marzani* v. *United States*, CA D.C., 168 F. 2d 133, 136 (1948), the Court had before it the precise two statutes involved in the

instant cases—the False Claims Act and the Wartime Suspension of Limitations Act. There the Court flatly held that "the Suspension Act does not apply to offenses under the False Claims Act". That case was twice affirmed by an equally divided Supreme Court, 335 U.S. 895 (1948) and 336 U.S. 922 (1949).

The question seems to have been put beyond cavil by the Supreme Court in *United States* v. *Beacon Brass Co.*, decided on November 10, 1952. There a one-count indictment was returned against the corporation and its president and treasurer, charging that, in violation of Section 145(b) of the Internal Revenue Code, 26 USC section 145(b), they had willfully attempted to evade taxes by making false statements to Treasury representatives on October 24, 1945, for the purpose of supporting, ratifying, confirming and concealing the fraudulent and incorrect statements and representations made in the corporate tax return . . . for the fiscal period ending October 31, 1944, filed on or about January 5, 1945."

Section 145(b) provides in part:

> "(A)ny person who willfully attempts *in any manner* to evade or defeat any tax imposed by this chapter or the payment thereof, shall, *in addition to other penalties provided by law*, be guilty of a felony . . ." (Emphasis supplied by the Supreme Court)

The indictment was returned on March 16, 1951. The six-year limitation period, 26 USC section 3748(a)(2), applicable to offenses under this statute, had expired on a charge for filing a false return in January, 1945, but it had not expired on a charge of making false statements to Treasury employees in October, 1945. The District Court viewed the indictment as charging the separate crimes of filing a false return and making subsequent false statements to Treasury representatives, and dismissed the indictment as duplicitous.

On September 14, 1951, a second indictment was returned against the defendants, repeating the charge that in violation of Section 145(b) they "did wilfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by the said corporation . . . by making certain false and fraudulent statements and representations, at a hearing and conference before representatives and employees of the United States Treasury Department, on or about October 24, 1945 . . ." Reference to allegedly false return filed in January, 1945, was omitted, and instead it was charged that the false statements were made "for the purpose of concealing additional unreported net income . . ."

The passage in the Supreme Court's opinion of particular application here is the following, appearing on Page 2 of the slip opinion,

since it refers to another clause of the very statute that is now being considered by this Court:

> "Section 35(A) of the Criminal Code, 18 USC section 80 (1946 ed.) (now 18 USC (Supp. V) section 1001) makes it unlawful to 'knowingly and willfully . . . make . . . any false or fraudulent statements or representations . . . in any matter within the jurisdiction of any department or
> 44 agency of the United States . . .' *Obviously*, at the times of the indictments here, the *three-year* limitation-period, 18 USC (Supp.V) section 3282, *for violations of this statute* had expired as to statements made in October, 1945." (Emphasis supplied)

In other words, in this very recent opinion, the Supreme Court of the United States has regarded it as "obvious" that the ordinary three-year period of limitation should apply to a case coming under the False Claims Statute, instead of the extended period provided for by the Wartime Suspension of Limitations Act.[2]

This Court is aware that, in United States v. Gilliland, 312 U.S. 521, 522 (1941), the Supreme Court, in construing Section 80, said:

> "The amendment (of 1934) indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described."

That case, however, did not involve a statute of limitations, which *Scharton* has reminded us "is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so denominated by the statutes creating offenses.". Furthermore, we have just seen that, in a case that did involve a statute of "repose" as well as Section 80, the Supreme Court has held that the *three*-year limitation period should apply.

This Court is likewise cognizant of the fact that, in an amended opinion in Bridges v. United States, handed down on November 18, 1952, the Court of Appeals for the Ninth Circuit held that, in order for the Suspension Act to apply, it was not necessary that
45 "fraud" should "be spelled out literally in the statute" under which the charge is laid. Slip opinion, page 16. It should be observed, however, that in its Bridges opinion, our appellate court did not evaluate the force of the word "denominated" in the Scharton case; that, in criticizing the "conclusions" of the Court of Appeals for the District of Columbia in the Marzani case, supra, the Ninth

---

[2] See also United States v. Obermeier, 2 Cir., 186 F. 2d 243, 257 (1950), certiorari denied, 340 U.S. 951 (1951); United States v. Shoso Nii, DC Hawaii, 96 F. Supp. 971, 972-973 (1951).

Court of Appeals did not consider the fact that *Marzani* had twice been affirmed, though by a divided Supreme Court; and finally, our Court of Appeals apparently overlooked the Beacon Brass case, supra.

This Court therefore, must though reluctantly, disregard the holding in *Bridges*, and be guided by the Supreme Court's recent semaphores in *Scharton*, *Marzani*, and *Beacon Brass*.

6. *Conclusion*

Accordingly, the Court holds that, as to all three indictments, the three-year statute of limitations fixed by 18 USC section 582 and its successor, 18 USC section 282, applies. Because the statute that the various defendants are charged with having violated or with having conspired to violate does not "denominate" the acts proscribed therein as "frauds", or does not, *in so many words*, have as an "ingredient" a "defrauding or an attempt to defraud the United States", neither the Wartime Suspension of Limitations Act of 1942 nor its successor of 1948 can apply.

All three motions to dismiss are granted, and all three indictments are dismissed.

Dated: December 5th 1952.

DAL M. LEMMON,
United States District Judge.

46 IN UNITED STATES DISTRICT COURT

No. 10744

UNITED STATES

vs.

LESTER E. GRAINGER

No. 10759

UNITED STATES

vs.

JOSEPH C. CLAVERE AND WILLIAM G. KENNEDY

No. 10767

UNITED STATES

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY AND A. L. SHAPIRO

ORDER GRANTING MOTION TO DISMISS—December 5, 1952

Briefs having heretofore been filed in each of the above-entitled cases and the matter taken under submission by the Court on mo-

tions to dismiss in each case, IT IS ORDERED, pursuant to opinion and Order this day filed, that all three motions to dismiss be granted, and all three indictments be dismissed.

47 IN UNITED STATES DISTRICT COURT

No. 10,744

UNITED STATES OF AMERICA

v.

LESTER E. GRAINGER

NOTICE OF APPEAL—Filed January 2, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Northern District of California, entered December 5, 1952, dismissing the indictment in the above-entitled case.

WALTER J. CUMMINGS, JR.,
Solicitor General,
Department of Justice,
Washington, D. C.

Dated: January 2d 1953.

[File endorsement omitted.]

48 IN UNITED STATES DISTRICT COURT

No. 10,759

UNITED STATES OF AMERICA

v.

JOSEPH C. CLAVERE AND WILLIAM G. KENNEDY

NOTICE OF APPEAL—Filed January 2, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Northern District of California, entered December 5, 1952, dismissing the indictment in the above-entitled case.

WALTER J. CUMMINGS, JR.,
Solicitor General,
Department of Justice,
Washington, D. C.

Dated: January 2d 1953.

[File endorsement omitted.]

49 In United States District Court

No. 10,767

UNITED STATES OF AMERICA

v.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY, AND A. L. SHAPIRO

NOTICE OF APPEAL—Filed January 2, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Northern District of California, entered December 5, 1952, dismissing the indictment in the above-entitled case.

WALTER J. CUMMINGS, JR.,
Solicitor General,
Department of Justice,
Washington, D. C.

Dated: January 2, 1953.

50-52 Notices under Rule 12 omitted.

53 In United States District Court

No. 10744

THE UNITED STATES

vs.

LESTER E. GRAINGER

DOCKET ENTRIES

1952

5-20. Ord Indictment filed, B. W. issue, Bail $5,000.00. Filed Indictment, issued bench warrant.

5-26. Deft arr'd; Con to June 9th, to plead.

6-7. Filed motion to dismiss Indictment.

6-9. Ord con to June 23rd to plead & for hearing of motion.

6-20—Filed deft's brief on motion to dismiss.

6-23. Hearing; Ord briefs be filed in 30-10 days, the motion to dismiss then to be submitted.

10-4. Filed pltff's brief in opposition to motion to dismiss.

11-1. Filed deft's closing memo of points & authorities.

11-3. Ordered motion to dismiss submitted.

12-5. Filed Opinion and Order. Ordered motion to dismiss granted & Indictment dismissed.

1953

1-2. Filed notice of appeal. Mailed notice to atty for deft. Filed statement as to jurisdiction.

1-7. Filed notice of the filing of an appeal.

1-16. Filed designation of contents on record on appeal to the Supreme Court of the United States.

54 In United States District Court

No. 10759

THE UNITED STATES

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY

DOCKET ENTRIES

1952

6-27. Ord Indictment filed, B. W. issue, Bail $5,000.00. Filed Indictment, issued bench warrants.

7-8. Each deft arr'd; Briefs submitted on motion to dismiss—defts to file brief by Aug. 1st, pltf to have 15 days to answer & deft 5 days to reply, motion to dismiss then to be submitted. Entry of plea continued generally. Defts released on O. R.

7-10. Filed bench warrant on ret. ex. 7-8-52 (Clavere). Filed bench warrant on ret. ex. 7-8-52 (Kennedy).

7-17. Filed motion by defts to dismiss indictment.

7-31. Filed memo. of points and authorities in support of defts Clavere and Kennedy to dismiss.

10-4. Filed pltff's memo. in opposition to motion to dismiss.

12-5. Filed opinion and order. Ordered motion to dismiss granted and Indictment dismissed as to each deft.

1953

1-2. Filed notice of appeal. Mailed notices to attys.

1-7. Filed notice of the filing of an appeal.

1-16. Filed designation of contents on record on appeal to the Supreme Court of the United States.

55 In United States District Court

No. 10767

THE UNITED STATES

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY, A. L. SHAPIRO

DOCKET ENTRIES

1952

6-27. Ord Indictment filed, B. W. issue, Bail $5,000.00. Filed Indictment, issued bench warrant.

7-8. Each deft arr'd; Briefs submitted on motion to dismiss; Defts to file opening brief by Aug. 1st; Pltff to have 15 days to answer and Defts to have 5 days to reply, motion to dismiss then to be submitted; Entry of plea continued generally. Defts released on O. R.

7-10. Filed bench warrant on ret. ex. 7-8-52 (Clavere); Filed bench warrant on ret. ex. 7-8-52 (Kennedy); Filed bench warrant on ret. ex. 7-8-52 (Shapiro).

7-17. Filed motion by defts to dismiss indictment. Filed motion by deft A. L. Shapiro to dismiss indictment.

7-30. Filed memo of points and authorities in support of motion to dismiss (Shapiro).

7-31. Filed memo of points and authorities in support of motion of defts' Clavere and Kennedy to dismiss Indictment (See case No. 10759).

10-4. Filed pltff's memo in opposition to motion to dismiss.

10-16. Filed stip. & ord. ex. time to file memo. points & authorities.

11-7. Filed stip. & ord. ex. time to file memo points & authorities.

12-5. Filed opinion and order. Ordered motion to dismiss be granted, and Indictment dismissed as to each defendant.

1953

1-2. Filed notice of appeal. Mailed notices to attys for defts.

1-8. Filed notice of the filing of an appeal.

1-16. Filed designation of contents of record on appeal to the Clerk of the United States Supreme Court.

56-57 DESIGNATION OF CONTENTS OR RECORD ON APPEAL OMITTED

58 IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed March 17, 1953

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the offense of willfully presenting "for payment" to the Commodity Credit Corporation, in which the United States is a stockholder, a claim known to be "false, fictitious or fraudulent" (18 U.S.C. [1946 ed.] 80), is not an offense involving fraud upon the United States within the purview
59 of the Wartime Suspension of Limitations Act, which suspended the running, until three years after the termination of hostilities, of any statute of limitations applicable to offenses involving fraud upon the United States (18 U.S.C. [1946 ed.] 590; 18 U.S.C. [1948 rev.] 3287).

2. The District Court erred in dismissing the indictments.

Appellant deems the entire records, as filed in the above-entitled cases, necessary for the consideration of the points relied upon.

ROBERT L. STERN,
Acting Solicitor General.

MARCH 1953.

Nos. 634, 635 & 636

UNITED STATES OF AMERICA, APPELLANT,

vs.

LESTER E. GRAINGER

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE AND WILLIAM G. KENNEDY

UNITED STATES OF AMERICA, APPELLANT,

vs.

JOSEPH C. CLAVERE, WILLIAM G. KENNEDY, AND A. L. SHAPIRO

The statement of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are transferred to the summary docket and assigned for argument immediately following No. 548.

APRIL 6, 1953.

U. S. GOVERNMENT PRINTING OFFICE 1953 245523 1430